
(2004) 12 KL CK 0044
In the High Court Of Kerala
Case No : W.A. No. 1931 of 2004

Vimal Arakkal

APPELLANT

Vs

Corporation of Cochin

RESPONDENT

Date of Decision : 06-12-2004

Acts Referred:

Kerala Municipalities Act, 1960 — Section 272
Kerala Municipality Building Rules, 1999 — Rule 2(1)

Citation : AIR 2005 Ker 70 : (2005) 1 ILR (Ker) 251 : (2005) 1 KLT 121

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Govind K. Bharathan and Manu Mohan, for the Appellant; S. Ramesh Babu, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Writ Petition was filed by the appellant challenging Ext.P5 notice issued by the Corporation of Cochin directing him to remove the hoarding put up by him without the permission of the Corporation. It is pointed out that the existing hoarding put up without the permission of the Corporation causes danger to the life and property of the pedestrians and the vehicles. Ext.P5 notice was issued u/s 275 as well as Section 411 of the Kerala Municipalities Act. Complaining that the Corporation has no power u/s 272 or u/s 411 of the act to issue such a notice, Writ Petition has been preferred. Various contentions were raised before the learned Single Judge. Learned Single Judge found no merit in the contentions and rejected the Writ Petition. However, it was ordered that if the appellant submits a formal application, Corporation would take note of the same and regularise the construction.

2. Before the learned Single Judge Corporation has taken a reasonable stand that they would not take any steps for demolition of the hoarding if any application is made for regularisation and the same would be regularised subject to the specifications for installation of hoardings. Counsel for the appellant Sri. Govindh K. Bharathan took us through the various provisions of the Municipalities Act,

particularly Sections 271 and 272.

3. Writ petitioner has put up a hoarding near the south western corner of Judges" Avenue near Kaloor. According to the Corporation, they have received several complaints from the general public and members of the Corporation Council with regard to the situation of the hoarding and the manner in which it has been installed. On receipt of the complaint, Engineering Department along with the Deputy Secretary of the Corporation visited the site and found that the hoarding was constructed without any precautionary measures and that it would cause imminent danger to the public. Under such circumstances they have issued Ext.P5 notice. Petitioner has stated that the hoarding was constructed in a private property after executing agreement with the owner of the property. Further it is also pointed out that the hoarding has been erected after the same is certified by the Chartered Engineer and following the precautions. Further it is stated that it is not dangerous to the public and the Corporation has no legal right to remove the said hoarding or to impose any tax. Further it is also the contention of the petitioner that Corporation has no right to assess the tax as per Section 271 of the Kerala Municipality Act, 1994 and only if the petitioner fails to pay tax which has been assessed by the Corporation they have the right to initiate proceedings u/s 272 of the Act to remove the hoarding. Petitioner also submitted that since tax has not been assessed u/s 271 no proceeding could be initiated u/s 272 of the Act. Petitioner made reference to the decision of this Court in *Thomas Kurian v. Joseph Thomas* (2002 (2) KLT625).

4. We are of the view the said contention cannot be accepted. First of all, Government have already issued notification in exercise of the powers conferred by the first proviso to Section 271 of the Act specifying the minimum rate of tax. As per Section 271 every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure in a municipal area any advertisement or who displays any advertisement to public view in any manner whatsoever in any place in such area, whether public or private, shall pay on every such advertisement tax calculated at such rates and in such manner. When such a notification has been issued no advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure in a municipal area without the written permission of the Secretary. Counsel for the writ petitioner is correct in his submission that Section 271 deals with tax on advertisement and Section 272 deals with prohibition of advertisement without written permission of the Secretary. But the question that is germane for consideration in this case is whether the writ petitioner is entitled to erect or exhibit in a private property without the permission of the Corporation.

5. Contention was raised by the counsel for the writ petitioner Sri. Govindh K. Bharathan that definition of the word "building" would not take in hoarding and consequently the Kerala Municipality Building Rules, 1999 would not apply in the matter of erection of a hoarding. Counsel took us through the definition of the word "building" in Section 2(2) of the Act, which reads as follows:

"building" includes, a house, out-house, stable, latrine, shed, hut, bunk and any other structure whether of masonry, wood, brick, mud, metal or any other material whatsoever."

Counsel also took us through the Kerala Municipality Building Rules, 1999 and submitted that installation of a hoarding would not satisfy the said definition as well. Counsel for the Corporation Sri. S. Ramesh Babu on the other hand contended that the definition of the word "building" would take in erection of hoarding as well and therefore permission is necessary before the installation of the hoarding.

6. We may in this connection refer to the definition of the word "building" in Section 2(1) of the Kerala Municipality Building Rules, 1999, which reads as follows:

(1) "building" means any structure for whatsoever purpose and of whatsoever material constructed and every part thereof whether used for human habitation or not and includes foundations, plinth, walls, floors, roofs, chimneys, plumbing and building services, verandah, balcony, cornice or projections, part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures;"

Contention was raised by the counsel that hoarding would fall only within the definition "advertising sign" under Rule 2(e). We are of the view, advertising sign and hoarding cannot be equated. Advertisement sign means any sign either free, supported or attached to a building or other structure which advertises an individual, a firm, a society an establishment or a product displayed on the said premises for identification purposes.

7. We have therefore no hesitation to hold that hoarding put up even in a private land would fall within the definition of the building under Rule 2(1) of the Building Rules. Once it falls within the definition of the building, Corporation has got the right to seek removal of the structure if erected without their permission. Before erecting the hoarding permission has to be obtained from the Corporation. Admittedly no such permission has been obtained. Consequently Corporation has got the right to seek removal of the structure. Corporation has also taken the stand in this case that they will not insist on removal of the structure if the appellant submits a formal application and seeks permission. Appellant has to submit the application in the specified manner before the Corporation within two weeks from today in the event of which Corporation would see whether it is in accordance with law and pass appropriate orders. If the appellant fails to do so Corporation would take appropriate steps for removal of the hoarding put up. The Writ Appeal is disposed of as above.